



**UNITED STATES DEPARTMENT OF COMMERCE**  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/034,336	03/04/98	AGA	H AGA-6

001444 HM12/0410  
BROWDY AND NEIMARK, P.L.L.C.  
624 NINTH STREET, NW  
SUITE 300  
WASHINGTON DC 20001-5303

EXAMINER	
MORAN, M	
ART UNIT	PAPER NUMBER

1631

DATE MAILED: 04/10/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/034,336

Applicant(s)

Aga et al.

Examiner

Marjorie Moran

Group Art Unit

1631

☒ Responsive to communication(s) filed on Feb 14, 2000.

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 5, 6, 9, 10, and 27-30 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 5, 6, 9, 10, and 27-30 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☒ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☒ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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### **DETAILED ACTION**

The Group and/or Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 1631.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Continued Prosecution Application***

The request filed on 2/14/00 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/034,336 is acceptable and a CPA has been established. An action on the CPA follows.

The amendments filed 12/7/99 and 1/13/00 have been entered. Claims 5-6, 9-10, and 27-30 are pending in the CPA. An action on the merits of the pending claims follows.

### ***Claim Rejections - 35 USC § 103***

In view of the cancellation of claims 7-8, all rejections of claims 7-8 are hereby withdrawn.

Claims 5-6, 9-10, and 27-30 are again rejected, as previously set forth in the office actions of 3/31/99 and 9/14/99, and maintained in the advisory actions of 12/20/99 and 2/14/00, under 35 U.S.C. 103(a) as being unpatentable over MARUTA *et al.* (A).

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Applicant's arguments filed 12/17/99 and 1/13/00 have been fully considered but they are not persuasive.

Applicant argues (cumulatively) that MARUTA teaches neither addition of trehalose in an aqueous system nor addition of trehalose to a plant substance which is in a juicy form, and points to Example B6 wherein MARUTA teaches addition of trehalose to powdered orange juice. However, as previously set forth in the advisory actions of 12/20/99 and 2/14/99, MARUTA does teach that trehalose may be added in aqueous systems and/or to plant substances in juicy form (col. 13, lines 20-31, 45-47, and 50-52, and col. 33, Example B9). Applicant is reminded that a reference is relied upon for the totality of its teachings; the fact that MARUTA teaches examples wherein trehalose is added to a dried composition is NOT a teaching away from addition to aqueous or "juicy" compositions, especially in view of MARUTA's specific teachings and example for addition to aqueous and "juicy" foodstuffs. In response to the argument that "active-oxygen eliminating" is a "broader concept" than "antioxidant", applicant is directed to MPEP 2131.02, which states that a species anticipates a genus, as previously set forth in the advisory action of 2/14/00. Applicant admits on p. 3 of the response filed 1/13/00 that "antioxidant" is a subgenus of "active-oxygen-eliminating", therefore MARUTA's teaching of stabilization of antioxidants anticipates stabilization of "active-oxygen eliminating" compounds.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so

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long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case, all of the limitations of the claims are taught by MARUTA, and MARUTA teaches both incorporation of trehalose into various foodstuffs and use of trehalose as a "stabilizer for biologically active substances susceptible to loss of their ... activities", and recites various antioxidants as examples of biologically active substances (col. 13-14). For all of the reasons previously set forth and set forth above, the rejection of claims 5-6, 9-10, and 27-30 is maintained.

### ***Conclusion***

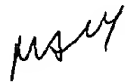
Claims 5-6, 9-10 and 27-30 are again rejected.

Papers relating to this application may be submitted to Technology Center 1600 by facsimile transmission. The number of the fax machine for official papers in Technology Center 1600 is (703) 308-4556. Any document submitted by facsimile transmission will be considered an official communication unless the cover sheet clearly indicates that it is an informal communication.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marjorie Moran whose telephone number is (703) 305-2363. The examiner can normally be reached on Monday through Friday from 7:30 a.m. to 4:00 p.m. If attempts to

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reach the examiner by telephone are unsuccessful, a supervisory examiner, Michael Woodward, can be reached at (703) 308-4028. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.



Marjorie A. Moran  
Patent Examiner  
Art Unit 1631



MICHAEL P. WOODWARD  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600